

Decision No. 89117 JUL 25 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LYNDA M. MEEKER,

Complainant,

vs

CONTINENTAL TELEPHONE OF CALIFORNIA,

Defendant.

Case No. 10436
(Filed October 7, 1977)O P I N I O N

Lynda M. Meeker and 25 other subscribers of Continental Telephone of California (defendant) complain that defendant billed a toll charge from Willow Creek to Weaverville for time-of-day calls that had been offered as a free service prior to April 1, 1977.

Defendant was directed to answer the complaint on October 7, 1977. No answer to the complaint has been docketed but defendant did informally answer the complaint by letter dated October 18, 1977.^{1/}

The change in defendant's offering in its Weaverville toll and time-of-day call service was first brought to our attention in an informal complaint No. U-33148-T^{2/}, filed on May 13, 1977 by about 500 subscribers in Hayfork.

In its reply to the informal complaint dated June 21, 1977^{3/}, defendant stated that it recently had completed major changes in its Weaverville toll service area. These changes provided new toll facilities, increased capacity of outside plant, and a new electronic switch in the Weaverville toll center.

^{1/} Included in this record as Exhibit 1.

^{2/} Included in this record by reference.

^{3/} Included in this record as attachment to Exhibit 1.

Historically, defendant has accessed its Weaverville time-of-day service through a three-digit toll free number used by all subscribers throughout the Weaverville toll area. This arrangement uses toll facilities and momentarily uses associated ticketing equipment until the call is identified as an attempt to reach special services. With the changes in its toll facilities, defendant placed its time-of-day service on a local Weaverville seven-digit number which generates a toll charge whenever accessed by a nonlocal call.

In justification of this change defendant states in Exhibit 1:

" . . . The present philosophy throughout the industry is to eliminate nonessential special services from using valuable time on these toll facilities freeing them for their intended use and avoiding dilution of toll revenues through settlements procedures."

Subsequent to filing of this formal complaint, defendant was advised by our Director of Communications Division, by letter dated December 28, 1977,^{4/} that defendant appeared to be in violation of Section 454 of the Public Utilities Code by the institution of the charge for time-of-day calls without a showing before this Commission. Defendant was directed to cease charging for time-of-day calls and to inform affected customers within 20 days that the charge for time-of-day calls had not been authorized by the Commission.

On January 23, 1978, defendant by letter^{5/} advised that effective January 21, 1978, toll charges for time-of-day service would no longer be applicable.

On March 14, 1978, defendant, while maintaining its tariffs require toll charges for time-of-day service, advised by letter^{6/} that it would refund, in the March 25 and April 11, 1978 billing cycles, all toll charges for time-of-day traffic to all customers in the Weaverville area who had generated such charges. On this basis, defendant assumed the complaint would be dismissed.

^{4/} Included herein as Exhibit 2.

^{5/} Included herein as Exhibit 3.

^{6/} Included herein as Exhibit 4.

Defendant, by letter dated March 29, 1978^{7/}, stated the basis for its belief that its tariffs require toll charges for time-of-day service as follows:

"Continental's contention that its tariffs require that a toll charge be applied for time-of-day service between the areas in question and our Weaverville time-of-day equipment is in accordance with Schedule Number B-1 of our tariffs filed and approved by the California Commission.

"Schedule Number B-1 identifies toll telephone service as service provided between points in the State of California where the respective rate centers of such points are located in said state. This schedule further includes our concurrence in The Pacific Telephone and Telegraph Company's tariffs covering toll telephone service."

Section 454 of the Public Utilities Code provides:

"454. (a) No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified; ..."

Discussion

Defendant's reliance on its Tariff Schedule No. B-1 as justification for its actions is misplaced. Section 454 of the Public Utilities Code clearly provides that defendant cannot arbitrarily raise any rate or alter any practice as to result in any increase in any rate unless it first makes a showing before this Commission and obtains a finding by this Commission that such an increase is justified. Defendant's increased costs due to improvements in facilities, its desire to maximize toll settlements, and industry standards are not justifications for an arbitrary and unauthorized rate increase and do not nullify the requirements of Section 454 of the Public Utilities Code.

7/ Included herein as Exhibit 5.

Findings

1. Prior to April 1, 1977, defendant offered time-of-day service to all subscribers in its Weaverville area without added charge.
2. On or about April 1, 1977, defendant began charging toll rates for time-of-day service in its Weaverville area to nonlocal Weaverville subscribers.
3. Defendant has altered its rates and practice so as to result in an increase in its rate for time-of-day service in its Weaverville area.
4. Defendant has not made a showing before this Commission nor has a finding been made by this Commission that an increase in the rate for time-of-day service in its Weaverville area is justified.
5. A hearing is not required to dispose of this complaint.

Conclusions

1. Defendant has violated Section 454 of the Public Utilities Code by increasing its charges for time-of-day service in its Weaverville area without making a showing before this Commission and obtaining a finding from this Commission that such an increase is justified.
2. Defendant's charges for time-of-day service in its Weaverville area are illegal charges.
3. Defendant should be required to refund all illegal charges for time-of-day service in its Weaverville area.

O R D E R

IT IS ORDERED that:

1. Continental Telephone of California shall discontinue making any additional charge to its subscribers in its Weaverville area for time-of-day service.

2. Continental Telephone of California shall refund all toll charges made to its subscribers in its Weaverville area for time-of-day calls and shall report in writing compliance with this order.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 25th day of JULY, 1978.

Robert Bakisinski
President
William S. Jones Jr.
Thomas L. Sturgeon
Cecil W. Howell
Clare T. DeWick
Commissioners